

LAMARR ROWELL,

Plaintiff,

vs.

GIANNONE et al.,

Defendants.

ORDER

¹ The parties and Court have used two variations of Officer Giannone's last name: Giannone and Giannoue. The Court will use Giannone moving forward because the officer signed his name using this spelling on the police report involved in the case. (*See* Police Report, 20, ECF No. 71-2).

1 Impound Report (“PIR”), listing the “Registered Owner’s Address” as “2928 Black Forest Dr.”
2 (PIR, ECF No. 71-2, at 22). Plaintiff was homeless and, thus, did not have an address at the time
3 he was arrested. (Rowell Dep. 14:2–5, ECF No. 71-2, at 2).

4 Following the arrest, Plaintiff was transported to Clark County Detention Center
5 (“CCDC”), and Ewing Bros. Towing Co. (“Ewing Bros.”) towed his vehicle. (*Id.*). Although the
6 vehicle was used in the commission of a burglary, the LVMPD did not place a hold on it. (PIR,
7 22). Similarly, the PIR specifically states that the vehicle was free to be released. (*See id.*).
8 During his deposition, Plaintiff showed Defendants a copy of the PIR released to his attorney.
9 According to the dissemination stamp on this copy, the PIR was released by LVMPD to the Clark
10 County District Attorney on July 6, 2007, one day after Plaintiff’s arrest. (Rowell Dep. 37:3–15).
11 Plaintiff retained counsel a week after his arraignment. (*Id.* at 36:13–19).

12 On July 7, Ewing Bros. sent Plaintiff a notice of public auction. (Notice, ECF No.71–2, at
13 24). The notice was mailed via certified letter, which was signed for by a “Jesse L. Sanders” at
14 the Black Forest Drive address listed on the vehicle registration. (*Id.*). The letter explained that
15 the vehicle would be auctioned on August 24, 2007, unless Plaintiff made arrangements to pay
16 the applicable towing, storage, and administrative charges. (*Id.*) Ewing Bros. also published a
17 notice of public auction on August 2, 9, and 16 of 2007 in the Las Vegas Review-Journal and Las
18 Vegas Sun newspapers. (Published Notice, ECF No. 71-2, at 27). The vehicle was apparently
19 sold at auction.

20 On the night of his arrest, Plaintiff called family members to arrange for someone to
21 retrieve the vehicle from the scene of the arrest “but was told that it was no longer there.” (Opp’n
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1 to Mot. Summ. J. 5, ECF No. 79). Plaintiff claims that had he known the car had been
2 impounded at the Ewing Bros. facility, he would have had someone retrieve it that night. (Rowell
3 Dep. 30:8–11). He also admits that although he was familiar with the CCDC inmate grievance
4 procedure, whereby inmates can send “kites” to CCDC staff to inquire about specific property
5 matters, he never sent a grievance to any CCDC employee regarding his vehicle. (*Id.* at 28:1–16).
6 Instead, his efforts to locate the vehicle consisted of enlisting his attorney to investigate the
7 matter. (*Id.* at 28:19–21). On or around August 23, Plaintiff received a discovery packet, which
8 contained a copy of the PIR. (*Id.* at 29:1–4). Plaintiff then contacted Ewing Bros. and learned
9 that the vehicle was no longer in the possession of Ewing Bros. (*Id.* at 29:5–13).

10 On August 30, 2007, Plaintiff sued Defendants in this Court for violations of his Fourth
11 Amendment right to be free from unreasonable searches and seizures and violations of his due
12 process and equal protection rights under the Fourteenth Amendment. Plaintiff requested: (1) a
13 permanent injunction to stop the Police Defendants from following Plaintiff; (2) a permanent
14 injunction to stop the Police Defendants from selling or stealing property; (3) an order that the
15 Police Defendants return all of Plaintiff’s property; (4) \$25 million in damages for the three
16 counts for which he was convicted; and (5) \$1 million in damages for each day that he had been
17 incarcerated without a final disposition of the charges against him. The Police Defendants moved
18 to dismiss, and the Court granted the motion in part, dismissing the entire Complaint with
19 prejudice, except for the procedural due process claim. The Court denied default judgment to
20 Plaintiff, even against Ewing Bros., who had failed to defend, because the Police Defendants
21 intended to file a motion for summary judgment that would test the merits of the case. The Court
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1 granted the Police Defendants' motion for summary judgment and dismissed the case,
2 concluding that Plaintiff had failed to present any evidence showing that Defendants Giannone,
3 Seed, or Young personally participated in the sale of Plaintiff's vehicle. The Court found that
4 Plaintiff had conceded that Defendants Seed, Giannone, and Young had nothing to do with the
5 seizure or sale of his vehicle. The Court also concluded that there was no evidence to support a
6 finding that Defendant Hiddema was involved in the sale of the vehicle and that a reasonable
7 fact-finder would conclude that the sale was caused by Ewing Bros.

8 Plaintiff appealed. The Court of Appeals affirmed dismissal of Plaintiff's claims against
9 Ewing Bros. and his Fourth Amendment claims, although it determined the Court should have
10 given leave to amend the Fourth Amendment claims. The Court of Appeals affirmed summary
11 judgment to Giannone, Seed, and Young but reversed as to the due process claim against
12 Hiddema based on lack of notice of the towing. The Court ordered the parties to submit briefs to
13 address the issues on remand, which they did. The Court granted summary judgment to
14 Hiddema against the due process claim. No claims remain. The Court previously granted
15 Plaintiff leave to amend his Fourth Amendment claims, as instructed by the Court of Appeals,
16 but Plaintiff has not submitted any amended pleading in the meantime. Plaintiff has asked the
17 Court to appoint counsel to represent him. The Court denies the motion.

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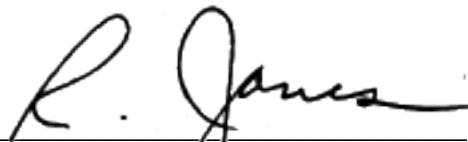
CONCLUSION

IT IS HEREBY ORDERED that the Motion for Appointment of Counsel (ECF No. 136) is DENIED.

IT IS FURTHER ORDERED that Plaintiff shall file an amended complaint as to his Fourth Amendment claims within fourteen (14) days of the entry of this order into the electronic docket, or the Court may dismiss with prejudice without further notice for failure to prosecute and failure to comply with a court order.

IT IS SO ORDERED.

Dated: This 12th day of December, 2016.



ROBERT C. JONES
United States District Judge